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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 25th September 1953

S.R.O. 1869.—Whereas the election of Shri Baikunth Prasad, as a member of the Legislative Assembly of the State of Vindhya Pradesh, from the Samaria constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Laxmi Prasad Singh, s/o Shri Indra Bahadur Singh, r/o Hinauta, District Rewa, Vindhya Pradesh;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL V.P. AT REWA

ELECTION PETITION No. 10/238 OF 1952

Shri Laxmi Prasad Singh, s/o Shri Indra Bahadur Singh, r/o Hinauta, District Rewa, V.P.—*Petitioner.*

Versus

1. Shri Baikunth Prasad (Congress), resident of Sirmaur, District Rewa, V.P. ;
2. Shri Ganga Prasad (Socialist), resident of Simaria, District Rewa, V.P. ;
3. Shri Lal Narayan Singh (Kisan Sabha), resident of Madan, District Rewa, V.P. ;
4. Shri Raj Narayan Shukul (Ram Rajya Parishad), resident of Teonthar, District Rewa, V.P. ;
5. Shri Vijaya Shankar (Jan Sangh), resident of Parora, District Rewa, V.P. ;
6. Shri Ram Kumar (Independent), resident of Sitalaha, District Rewa, V.P. ;
7. Shri Amarjeet Singh (Independent), resident of Paira, District Rewa, V.P.—*Respondents.*

CORAM:—

1. Shri E. A. N. Mukarji, M.A., LL.B., *Chairman.*
2. Shri U. S. Prasad, B.A.,B.T., *Member.*
3. Shri G. L. Srivastava, M.A., LL.B., *Member.*

ORDER

This is a petition presented by Shri Laxmi Prasad Singh, resident of Hinauta, District Rewa, V.P., who was a duly nominated candidate for election to the V.P. Legislative Assembly from the Simaria constituency, which was a single member constituency, and he was allotted the K. M. P. Party symbol of 'hut'.

2. The seven Respondents were also candidates at the same election from the said constituency. Polling took place in this constituency on 11th, 13th 15th, 17th and 19th January, 1952. Counting of votes took place on 30th January, 1952 at Rewa, when respondent No. 1 Shri Baikunth Prasad (Congress candidate) was declared as having been duly elected.

3. The votes declared to have been polled by the different candidates were as follows:—

Name of candidate		*Votes declared to have been obtained*
1. Shri Baikunth Prasad	..	2,518
2. Shri Ganga Prasad	..	908
3. Shri Lal Narayan Singh	..	651
4. Shri Raj Narayan Shukul	..	614
5. Shri Vijaya Shankar	..	315
6. Shri Ram Kumar	..	603
7. Shri Amarjeet Singh	..	431
8. Shri Laxmi Prasad Singh (Petitioner)	..	1,737

4. The election of respondent No. 1 to the V.P. Legislative Assembly is challenged, as being void, on the following grounds, detailed in para 7 of the petition:—

(a) The ballot boxes used in the election were defective and were contrary to the mandatory provisions of law, as they could be un-locked and ballot papers could be taken out therefrom, without their seals being broken. This was a serious non-compliance with the provisions of the Constitution and the Acts and Rules made for holding elections.

(b) The sealing of ballot boxes was not done according to the provisions of clause (5) of Rule 21 of the Representation of Peoples (Conduct of Elections and Election Petitions) Rules, 51.

(c) At *Bareti*, polling station, the Presiding Officer did not prepare sealed packets of the documents mentioned in Rule 32 of the said Rules, at the close of the poll, on 11th January, 1952. This was a violation of Rule 32 mentioned above. The Returning Officer, at the time of counting, did not open the sealed packets containing papers and documents mentioned in Rule 32, in presence of the petitioner or his agent, and told the petitioner that these packets had already been opened behind his back. This was also a violation of the Rules and has prejudiced the interests of the petitioner. Further the Returning Officer did not verify the accounts submitted by the Presiding Officers, as required by the rules.

The total number of votes polled in the whole constituency for all the candidates was found at the time of counting, to be in excess by 182 over the number which, according to the announcement of the Returning Officer before counting, should have been found in the ballot boxes. The Returning Officer did not explain this discrepancy in spite of objections made by all the candidates, other than respondent No. 1.

(d) No account in form No. 10 was prepared by the Presiding Officers immediately after the close of the poll.

(e) The Returning Officer did not permit the petitioner or his agents to take a copy of or extract from the return which he was required to prepare under Rule 50, nor was such return prepared by him in presence of the petitioner or his agents.

(f) No adequate arrangements for the safe transport or safe custody of the ballot boxes were made by the Returning Officer with the result that such ballot boxes and the packets of accounts and returns were kept, after the poll and till the date of counting, in the open court room of the Deputy Commissioner, who was the Returning Officer. This place was easily approachable and was in fact approached by various people with ample opportunity to tamper with those boxes.

(g) The contraventions of law were made so that ballot papers in the ballot boxes could be manipulated.

(h) With the connivance of respondent No. 1, his agents and supporters, the ballot boxes were tampered with and ballot papers from the petitioner's boxes were extracted and were introduced into the boxes of respondent No. 1 and also fresh and unused ballot papers were introduced into such boxes.

(i) The seals of the ballot boxes of *Sitalha* polling station and *polling stations No.* 13, 15, 24 and *Shahpur* were found broken at the time of counting, but no notice of this fact was taken by the Returning Officer when a complaint was made about it.

(j) In polling stations Chachai, Binda A, Binda B, Shahpur, Birkham, Atariya A, Atariya B, Raghauli A, Raghauli B, Badra, Semaria A, Semaria B and Hataha, the petitioner's polling agent had affixed their seals on the threads of the ballot boxes, but at the time of counting none of these seals were found to exist.

(k) In polling station Nos. 13, 14, 15 and 16 of this constituency, *1,183* ballot papers for the Parliamentary seat were found in the ballot boxes for the Legislative Assembly seat and such ballot papers were rejected by the Returning Officer at the time of counting, who however, refused to order a repoll.

(l) At the time of counting 8 ballot boxes of different candidates were found to have no symbols on the outside, nor any other identifying marks.

(m) The whole of the Congress Organisation, including its workers, supporters and sympathisers were supporting respondent No. 1 and openly intimidated and exerted undue influence on the voters to vote for respondent No. 1.

(n) The Congress officials of Vindhya Pradesh, particularly those who were concerned with the conduct of elections and those to whom a reference has been made in other parts of the petition, actively participated by canvassing for respondent No. 1 and exercising undue influence and coercion etc., in order to secure the defeat of K. M. P. Party.

(o) The election of respondent No. 1 has been secured by corrupt practices mentioned in the list of particulars.

(p) The result of the election has been materially affected by the improper acceptance of the nomination paper of respondent No. 1.

(q) But for the votes obtained by respondent No. 1 by corrupt and illegal practices and the wrongful transference of ballot papers from petitioner's boxes to respondent No. 1's boxes, the petitioner would have been found to have obtained a majority of valid votes.

(r) The result of the election has been materially affected by the improper reception of votes and non-compliance with the provisions of the Constitution, the R. P. Act, 51 and Rules and Orders made there-under.

(s) The Returning Officer did not make packets of ballot papers and seal them after finishing the counting of one candidate and before starting the counting of other candidates' votes.

5. In the list of particulars, mention is made of 3 corrupt practices, which are as follows:—

(1) Shri Parasnath, the then Headmaster of Sirmaur school, which is a Government institution, at the instance of respondent No. 1 and his Agents exercised undue influence on the voters to vote for respondent No. 1.

(2) The then Kanungo of Sirmaur Kanungo Circle similarly canvassed for respondent No. 1 with the connivance of respondent No. 1 and his agent.

(3) Shri Badri Prasad a teacher of Sirmaur Government school actively canvassed for respondent No. 1.

6. The allegations made in the petition were categorically denied by respondent No. 1 in his written statement. He pleaded that he was properly and validly elected and that there had been no corrupt practices exercised in his interest or with his connivance and also that there had been no breach or non-compliance with the provisions of the Constitution, or the R.P. Act, 51 or Rules made there-under. He denied the allegations of undue influence or coercion alleged to have been exercised on his behalf by any Government official. He also contended that the petition was not properly verified and that the array of parties was defective for the non-joinder of Shri Indra Bahadur Singh who was a duly nominated candidate.

7. The following issues were framed:—

Issue No. I(a).—Was Shri Indra Bahadur Singh who was a nominated candidate and who had withdrawn his candidature, a necessary party to this petition?

Issue No. I(b).—If so, what is the effect of his non-joinder?

Issue No. II(i).—Have the petition and list of particulars not been properly verified?

Issue No. II(ii).—If so, what is the effect?

Issue No. III.—Is the election of respondent No. 1 void and is it liable to be declared as such because the ballot boxes used in the election were defective and contrary to the mandatory provisions of law, and they could be unlocked and ballot papers could be taken out without their seals being broken?

Issue No. IV (1).—Have there been contraventions of the provisions of the R.P. Act and of the Rules made thereunder, as alleged in para. 7, clauses (b), (c), (d), (e), (i), (j), (k), (l), and (s) of the petition?

Issue No. IV (2).—Were such contraventions made in order that the ballot papers in the ballot boxes could be manipulated?

Issue No. IV (3).—Were such ballot boxes tampered with by the connivance of respondent No. 1, his agents and supporters and thereby ballot papers from petitioner's boxes were extracted and put into the boxes of respondent No. 1 and also fresh and unused ballot papers were put into respondent No. 1's ballot boxes?

Issue No. IV (4).—If so, what is the effect?

Issue No. V(i).—Were no adequate arrangements made for the safe transport and safe custody of ballot boxes and packets etc. or for their safe custody with the result that they were easily approachable by people with ample opportunities to tamper with them?

Issue No. V(ii).—Were such ballot boxes tampered with the connivance of respondent No. 1, his agents and supporters?

Issue No. VI(1).—Did V. P. Government officials, who took part in the conduct of the election, as well as the members of the Congress Organisation, actively canvass for respondent No. 1 and exercise undue influence and coercion in order to secure the defeat of the K. M. P. Party?

Issue No. VI(2).—Was this done with the active connivance of respondent No. 1?

Issue No. VI(3).—If so, what is the effect?

Issue No. VII.—To what relief, if any, is petitioner entitled?

FINDINGS

8. *Issue No. I.*—The plea of non-joinder as involved in this issue was disposed of by our order dated 26th November 1952.

Issue No. II(i).—This issue was disposed of by our order dated 15th January, 1953, wherein it was held that the verification in this case is proper.

Issue No. II(ii).—This does not now arise.

Issue No. III.—This issue is based on the allegation contained in para. 7, sub-para. (a) of the petition. It is alleged that the ballot boxes used in this election were defective, and were contrary to the mandatory provisions of law, because they could be unlocked and ballot papers could be removed therefrom, or inserted into them. On this ground it is claimed that there has been a serious non-compliance with the provisions of the Constitution and the Acts and Rules made for holding elections.

The particular provision of law alleged to have been contravened is contained in Rule No. 21, clause (1) of the Representation of the Peoples (Conduct of Election and Election Petitions) Rules, 51. This rule provides that "every ballot box shall be of such design and colour as have been previously approved of by the Election Commission. It shall be so, constructed that ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the boxes being unlocked and the seals being broken".

The evidence in support of this issue consists of a demonstration made by Shri Jai Singh whose statement was recorded in file No. 3/141 and which statement has been transferred to this record at the request of counsel for the petitioner and with the consent of counsel for respondent No. 1.

Shri Jai Singh was then a second year student of some college at Allahabad. He demonstrated before this Tribunal how a ballot box of the design used in the last general election, can be opened with the help of some ordinary and crochet needles. After a ballot box had been sealed, he proceeded to shift back the knots on the thread up to the lac seal and then twisted the window cover to such an extent that the window was exposed. In doing so however he broke the lac seal over the thread. Then he gently pushed the paper seal in such a manner

as to expose a small portion of the string which operates the clasp on the inner side of the lid. With the help of some needles and crochet needles, he pulled out this string without causing any appreciable damage to the paper seal, excepting a slight crease. After that he was able to pull the string and unlock the box. This evidence shows that ballot box of the design used at the last election could be opened after breaking the lac seal on the thread but without damaging the paper seal appreciably, provided attempt is made with the use of sufficient dexterity and skill, as was exercised by Shri Jai Singh P.W. This evidence does not, however, prove that these ballot boxes were of a design which had any inherent mechanical defect of construction. The Election Commission approved of this design after due care and caution. The fact that the boxes can be unlocked with the use of dexterity and skill and even then after damaging the lac seal, does not render such approval improper, or contrary to the requirements of Rule 21, sub-rule (1). In fact there may be very few boxes which can be said to be proof against human dexterity and skill.

We find, therefore, that there has been no contravention of Rule 21(1) of the rules referred to above, but there has been substantial compliance with it.

Issue No. IV(1).—This issue covers the alleged contraventions of the R. P. Act and of the Rules made thereunder, as given in para. 7, clauses (b), (c), (d), (e), (i), (j), (k), (l), and (s) of the petition. We shall deal with the allegations in these clauses separately.

Para. 7, Clause (b).—This clause contains the allegation that the ballot boxes were not sealed according to clause (5) of Rule 21 of the Representation of the Peoples (Conduct of Elections and Election Petitions) Rules, 51. It deals with the sealing of the ballot boxes *before* the commencement of the poll. It provides that the paper seal or other seals used in a ballot box should be so affixed that it shall not be possible to open the box without breaking such paper or other seals or any thread on which seals have been affixed.

In support of this allegation we have been referred to the evidence of P.Ws. 10, 14, 16 and 18. These witnesses state that the inner fold of the paper seal was pasted by keeping it a little loose. In rebuttal we have the statements of several witnesses to the effect that the paper seals were pasted tightly. In this connection we may refer to the statements of Shri Ram Kripal (R.W. 8), Ram Saran Sharma (R.W. 11), Baikunth Prasad (R.W. 12), another Baikunth Prasad (R.W. 14), Sokhe Lal (R.W. 15), and Kedar Nath (R.W. 16) etc.

Having regard to our finding on issue No. III and the demonstration made before us, the question of looseness of the paper seal no longer remains important.

However, in view of the contradictory evidence of parties on this point we find that the allegation in clause (b) has not been proved satisfactorily.

Para. 7, Clause (c).—This clause contains the following four allegations:—

(1) The Presiding Officer did not make up into separate packets and seal all the papers and documents mentioned in Rule 32, at the close of the poll, on the 11th January, 1952.

(2) The Returning Officer at the time of counting, did not open the sealed packets, mentioned in Rule 32, in the presence of the petitioner or his counting agent. He stated that he had done so behind the back of these persons. This was a violation of the rules and has seriously prejudicaed the petitioner.

(3) The Returning Officer did not verify the accounts submitted by the Presiding Officers, after the counting, as he was required to do under the rules.

(4) The total number of votes polled in the whole constituency for all the candidates was found to exceed by *182 votes*, the number of ballot papers which, according to the announcement made by the Returning Officer before the counting, should have been found in the ballot boxes. This discrepancy was not explained, in spite of protest.

Out of the above four allegations, the learned counsel for the petitioner has pressed his case with respect to the allegation No. 4 only. We find that the allegations No. 1 to 3 mentioned above have not been substantiated by any credible evidence.

We proceed to discuss the question of *excess of 182 ballot papers*. Reference has been made to the evidence of several witnesses of the petitioner, as well as

of respondent No. 1, on this point and also to certain documents exhibited on the record.

Shri Sheo Prasad (P.W. 3) was the counting agent of respondent No. 6 who himself was an independent candidate in this election. This witness states that, at the request of the counting agents, the Returning Officer gave out the numbers of ballot papers issued, and at the end of the counting it was found that 182 ballot papers were in excess of the number already announced by the Returning Officer. This witness filed a written objection regarding this matter and got a receipt.

Shri Ramkumar (P.W. 4) the candidate himself deposed to the same effect.

The next witness on this point is Shri Ganga Prasad (P.W. 5) a socialist candidate at this election. He has corroborated the statement of Shri Ramkumar and his counting agent.

Shri Chitranged Singh (P.W. 10) acted as polling and counting agent of the petitioner at the last election. He has also corroborated the petitioner's evidence on this point and mentioned that a written objection regarding it was presented to the Returning Officer.

P.W. 17 *is Shri Audhraj Singh,* counting agent of Shri Lal Narayan Singh, who was a Kisan Sabha candidate at this election. He has also deposed about this excess and states that a written complaint was filed by 5 of the counting agents regarding this matter. He has produced and proved a copy of this complaint (Ex. RW17/1) which bears the signature of the 5 agents who have deposed on this point. He has also produced the receipt (Ex. RW17/2) given by the Returning Officer regarding the presentation of this objection.

The last witness of the petitioner on this point is *Shri Keshau Prasad Pleader* (PW 20) who acted as an agent of the petitioner and who was present at the time of counting. He states that he and other agents requested the Returning Officer to give them information from the records about the serial numbers of the ballot papers issued as well as those that were used, unused and cancelled. He took the precaution of noting down such numbers on sheets which he has produced as Ex. RW20/1 and Ex. RW20/4, and according to which there was obviously an excess of 182 ballot papers found in the ballot boxes as compared with the numbers of ballot papers issued, after accounting for those unused and cancelled.

The respondent's evidence on this point consists of the statements of respondent No. 1 himself as R.W. 14, and his counting agent as R.W. 13.

Respondent No. 1 states that no objection in regard to the excess of ballot papers recovered from the ballot boxes was made by the candidates or their counting agents. He has therefore only denied the presentation of any objection by counting agent, but the presentation of objection of which a copy is Ex. PW17/1, has been satisfactorily proved by the signatories to it and its receipt signed by the Returning Officer. R.W. 13 is Shri Brijraj Singh, M.L.A. who was counting agent of respondent No. 1. He has admitted that, after the counting, an excess of *"188"* ballot papers was found over the total number of issued ballot papers according to Form No. 10.

After taking into consideration the oral and documentary evidence produced by the petitioner, as well as a significant admission made by respondent No. 1's counting agent, we find that it has been satisfactorily proved that the ballot papers actually found in the ballot boxes at the time of counting, exceeded by 182, the numbers which, according to the information given by the Returning Officer before the counting, should have been found in the ballot boxes. This information was obviously based on the entries in form No. 10, as we have not been referred to any other document from which the Returning Officer might have supplied the information.

In order to verify the number of ballot papers actually issued, so that a comparison may be made with the number actually found in the ballot boxes, we have made a complete check of the marked electoral rolls as well as of forms No. 10.

With regard to the marked electoral rolls, we find that several of them bear no seal on the packets in which they had been enclosed. Others bear the seal with the initials 'G.K.' from which it does not appear whose seal it was. In any case it was not the official seal used at the election. By way of example, we may refer to the electoral rolls relating to the polling station Chachai (No. 25). The packet containing these electoral rolls bears no seal at all. The packets containing the marked electoral rolls for polling station Nos. 17 (Badra), and No. 18 (Samaria) bear one seal each with the initials 'G.K.' mentioned above. Other seals are missing from these packets, although their marks are there.

There are no signatures of any agent on the packets containing marked electoral rolls for polling stations No. 13, 14, 15, and 16, although there is evidence to show that some of the agents had affixed their signatures on such packets.

A check of the marked electoral rolls themselves, however, shows that with the exception of very small discrepancies, the number of ballot papers which were issued to the voters according to these marked electoral rolls, tallies with the number of ballot papers actually found in the ballot boxes. The discrepancies being in the cases of polling stations Nos. 8, 24, 17, 11, 28, and 20. In each case the discrepancy is of *one* only, excepting in polling station Nos. 11 and 20. This fact tends to show that forms No. 10, from which evidently the Returning Officer announced the numbers before starting the counting, had been incorrectly prepared. We find, however, that entries in forms No. 10, *as they now exist*, tally generally with the numbers of ballot papers which were issued according to the marked electoral rolls and which were found at the time of counting. This is only possible if the forms No. 10 were subsequently corrected, in order to remove the discrepancy of 182 ballot papers. An inspection of forms No. 10 supports this conclusion. In the majority of these forms, which are exhibited as PW1/31 and are 29 in number, the serial numbers of ballot papers received by the Polling Officers are wanting. In several others there have been a number of corrections made and such corrections appear to be of a later date than the original date of preparation of the forms. For example, see the form No. 10 for polling station Nos. 4 (Jawa B), 11 (Bareta), and 13 (Bhamra) etc. In the case of polling station No. 17 (Badra) the correction was apparently made in such a hurry that the date of preparation of the form is given as "29th January 1951" *i.e.* about one year before the date of polling. Similarly, in the case of polling station No. 18 (Separia A) the form No. 10 is dated 27th January 1952 *i.e.* about 8 days after the close of the polling and 3 days before the date of counting.

Out of 29 forms No. 10, we find that even at present the serial numbers of "ballot papers received" are entered in 13 forms only, i.e. less than 50 per cent. In the case of Badra (polling station No. 11) the number of ballot papers received was first shown as *4000*, and the number of unused ballot papers returned was first shown as *1750*. Both these numbers have since been struck off and the first number has been corrected in red ink to *2000*, and there is no number in the existing entry for "unused ballot papers returned".

We find, therefore, that the Presiding Officers showed gross negligence and incompetence in the preparation of forms No. 10, with the result that such forms had apparently to be manipulated later on to make them tally with the number of ballot papers actually found at the time of counting. This conduct is most reprehensible and might well result in enormous financial loss to the electorate and to the State Government if it could be established that these irregularities have affected the result of the election materially. We are, however, satisfied that this improper procedure was not in pursuance of an evil design and was not resorted to for an ulterior motive.

We record the finding regarding this clause to the effect that originally there was a discrepancy of 182 ballot papers which were found in excess over the number of ballot papers shown as having been issued. But we have still to decide whether this fact has materially affected the result of election, because in such cases alone this Tribunal would be able to take action under Section 100, sub-section 2, clause (c) of the R.P. Act, 51.

Para 7, clauses (d and e).—These allegations have not been pressed.

Para 7, clause (i).—It is stated in this clause that seals on the ballot boxes of Sitalha polling station as well as of polling station Nos. 13, 15, 24 and Shahpur were found broken at the time of counting, and that this fact was brought to the notice of the Returning Officer who took no action.

This allegation is supported by the statement of Shri Sheo Prasad (PW 3) counting agent of Shri Ramkumar, respondent No. 6, Shri Ramkumar (PW4), Shri Ganga Prasad, Socialist candidate (P.W. 5), Shri Chitranged Singh (P.W. 10), Shri Audhraj Singh (PW 17), Shri Keshau Prasad (PW 20) and the petitioner himself as P.W. 21. It is supported by a complaint made to the Returning Officer in writing. Ex. PW 20/1 is the copy of that complaint and Ex. PW 20/2 is the receipt granted by the Returning Officer.

Shri Brijraj Singh (RW 13) admits that some of the boxes had partially damaged lac seals.

We find that there is sufficient evidence to prove that at the time of counting, several of the ballot boxes were found to have their lac seals damaged.

It has been argued that this fact would facilitate tampering, but there must be further proof of such tampering and of the result thereof.

Para 7, *clause* (*j*).—This clause contains an allegation that, at the time of counting, the seals which had been affixed by the agents of the candidates on the thread of the ballot boxes, were found missing. The evidence regarding this allegation has not been sufficiently corroborated. For example, Shri Chitrangad Singh (PW 10) makes a vague statement "in almost all the ballot boxes the seals we had put, were missing". We have been referred to no other witness in support of this allegation. Reference has, however, been made to the statements of Shri Bhan Singh (RW 5) who states that he and other polling agents used to sign the packets. This statement contradicts that of P.W. 10.

With respect to other polling stations mentioned in this clause, our remarks would be similar.

We find that there is no satisfactory evidence to support this allegation.

Para 7, *clause* (*k*).—It has been mentioned in this clause that in polling station Nos. 13, 14, 15 and 16, *1183* ballot papers of the Parliamentary seat were found in the ballot boxes meant for the Legislative Assembly and such ballot papers were rejected by the Returning Officer. It is contented that this irregularity is of a serious nature and would affect the result of election. We are unable to agree with this contention. There is no evidence to show that the voters were misled by the issue of ballot papers with a green coloured bar (meant for the House of People) instead of ballot papers with chocolate coloured bars (meant for Assembly). We have examined both these kinds of ballot papers and have noticed that the colour of the bar in case of both is very dim and there is nothing to show that the voters were misled or confused on account of this interchange of the ballot papers. They clearly indicated their intention to vote for the candidate of their choice. We consider that such ballot papers were rightly rejected under Rule 47 of the Representation of the Peoples (Conduct of Elections and Election Petitions) Rules, 51.

Moreover, even if the number of votes thus cast for different candidates be seen, we would find that the majority is in favour of respondent No. 1. Out of these 1183 rejected ballot papers the highest *i.e.* 660, were cast in favour of respondent No. 1 and the next highest, namely 173, in favour of the petitioner. So in no case this interchange of ballot papers would materially affect the result of the election.

Our view is in agreement with that expressed by the Hoshangabad Tribunal in their judgment published in the Gazette of India dated 15th April, 1953. We are in respectful disagreement with the view expressed by the West Bengal Tribunal in their judgment, dated 4th March, 1953, published in the Gazette of India (Extraordinary) of that date. That Tribunal found that ballot papers wrongly issued for the Assembly, although meant for the House of People, should be rejected because the Rule No. 47 mentioned above was "directory" and not "mandatory". We are, therefore, of the opinion that the rejection of 1183 ballot papers by the Returning Officer was correct and that in any case this interchange of ballot papers would not affect the result of the election.

Para 7, *clause* (*L*).—There is no satisfactory evidence to support this allegation.

Para 7, *clause* (*s*).—This has not been pressed before us.

Issue No. IV (2, 3, *and* 4).—The contraventions which have been proved to have been made might raise a presumption in favour of tampering, but there is no direct proof of circumstances showing tampering and hence we are unable to hold that the contraventions were made in order that the ballot papers could be manipulated or tampered with.

We also find that the bungling that was done by the Presiding Officers at the time of preparation of forms No. 10 cannot be said to have resulted in having any material effect on the result of election. The excess of 182 ballot papers, even if found to be proved, would not affect the position of the candidates, because respondent No. 1 was elected by a majority of 781 votes. It is true no doubt that the haphazard manner in which the forms No. 10 were prepared would possibly facilitate manipulation of the accounts, as appears to have been done in this case, but this fact also does not amount to a clear indication of tampering in a manner in which it would affect the result of election. We find, therefore, that there is no satisfactory evidence to prove that the contraventions of the rules in this case have materially affected the result of election.

Issue No. V.—The learned counsel for the petitioner has conceded that there is no evidence in support of this issue which, therefore, stands un-proved.

Issue No. VI.—There was a serious allegation covered by this issue, namely that all the Government officials of this State, who took part in the conduct of the election as well as the members of the Congress Organisation, actively canvassed for respondent No. 1 and exercised undue influence and coercion etc. in order to defeat the K. M. P. Party. The learned counsel for the petitioner has, however, restricted his arguments to the conduct of Shri Parasnath only. Parasnath was a teacher in a Government school and a complaint was made against him by the then President of the K. M. P. Party. This letter (Ex. PW2/1) has been produced by Shri Dulichand, Office Superintendent of the office of the Director of Education, V.P. The endorsement on the back of it shows that a copy of it was forwarded to the District Inspector of Schools at Rewa for enquiry and report within a week, but the result of the enquiry is not before us. It was stated in this letter that Shri Parasnath actively canvassed for respondent No. 1. Sardar Narmada Prasad Singh has appeared as P.W. 18 and has stated that he wrote this letter on receipt of information from his workers. There is however, absence of satisfactory corroboration regarding this allegation, and Shri Parasnath has appeared as R.W. 2 and sworn that he never threatened nor canvassed any voters.

We find, therefore, that the allegations contained in this issue have not been satisfactorily established.

Issue No. VII.—Certain contraventions of the rules have been proved in this case, but there is no evidence to show that the result of the election has been materially affected on account thereof. Consequently we are of the opinion that the petition must fail and we accordingly order that the petition be dismissed with costs. We assess the cost at Rs. 200 which will be payable by the petitioner to Respondent No. 1.

In this case Shri B. C. Dey, Advocate, and Shri Vamangopal pleader appeared for the petitioner. Respondent No. 1 was represented by Shri A. P. Pande and Shri S. D. Pande Advocates and Shri Harish Kumar Srivastava and Shri G. P. Misra pleaders.

Announced.

The 14th September, 1953.

(Sd.) E. MUKARJI, *Chairman*
(Sd.) G. L. SRIVASTAVA, *Member.*
(Sd.) U. S. PRASAD, *Member.*

ANNEXURE A

FINDINGS

Out of the election petitions pending before this Tribunal there are 11 such petitions in which written pleas have been put in by parties and in which among other matters as plea of non-joinder of parties has been raised, which calls for decision. In order to explain the nature of the pleas that have been raised in these petitions, we give below the number of such petitions and the issues framed on the question of non-joinder.

1. *File No.* 1/74.—No. I(a). —Was Shri Sheo Kumar Sharma a necessary party to this petition?

(b) If so, what is the effect of his non-joinder?

(NOTE: It may be noted that Shri Sheo Kumar Sharma mentioned in this issue was a candidate who had withdrawn his candidature within the prescribed period.)

2. *File No.* 2/140.—No. XVI. Were Shri Pancham Lal Jain, Shri Vaidya Jamuna Prasad and Shri Shambhu Nath Shukla necessary parties to this election petition and what is the effect of their non-joinder?

(NOTE: The persons mentioned in this issue are those who had been nominated but had withdrawn their candidature within the prescribed period.)

3. *File No.* 3/141.—I.(a) Is the constitution of the array of the respondents defective by reason of non-joinder of Shri Ravendra Singh and Shri Madsudan Prasad?

(b) Is such defect, if any, fatal to the maintenance of the petition?

(NOTE: Persons mentioned in this issue are stated to have withdrawn their candidature within the prescribed period.)

4. *File No.* 4/164.—IV (a) Were Shri Abhairaj Singh, Shri Ram Pratap Singh and others who were nominated and who are alleged to have withdrawn, necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

5. *File No.* 9-237.—I (a) Whether the candidates who had been nominated and who had withdrawn their candidature, were necessary parties to this petition?

(b) If so, what is the effect of his non-joinder?

6. *File No.* 10/238.—I (a) Was Shri Indra Bahadur Singh who was a nominated candidate and who had withdrawn his candidature, a necessary party to this petition?

(b) If so, what is the effect of his non-joinder?

7. *File No.* 11/239.—I (a) Were the candidates, who had been originally nominated but who had withdrawn their candidature under Section 37 of the Representation of the People Act, necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

8. *File No.* 12/249.—I (a) Were Shri Somchand Jain and Shri Chhotey Lal necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(NOTE: It is to be noted that both the persons mentioned in this issue, namely Shri Somchand Jain and Shri Chhotey Lal, were the candidates whose nominations had been rejected).

9. *File No.* 13/260.—XVI II. Was Shri Shankar Prasad a necessary party to this petition and what is the effect of his non-joinder?

(NOTE: It may be noted that Shri Shankar Prasad was a candidate who had been nominated but who had withdrawn his candidature within the prescribed period.)

10. *File No.* 14/304.—I (a) Were Shri Dan Bahadur Singh, Shri Saraswati Prasad and Shri Govind Singh necessary parties to this petition?

(b) Is their non-joinder fetal to the petition?

(NOTE: It may be noted that Shri Dan Bahadur Singh and Shri Govind Singh were candidates whose nomination papers had been rejected and Shri Saraswati Prasad is stated to have withdrawn his candidature.)

11. *File No.* 15/307.—I (a) Were Shri Puran Chand and Shri Polwa necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(NOTE: It may be noted that both the persons mentioned in this issue were candidates whose nomination papers were rejected.)

It is apparent, from the above list, that in two of the above petitions, namely No. 12/249 and 15/307, and partly in No. 14/304, the question arises whether a candidate whose nomination paper was rejected at the time of scrutiny is a necessary party to these election petitions, under Section 82 of the Representation of the People Act, 1951, and what is the effect of his non-joinder.

In the other 8 cases and in the case of one person in file No. 14/304 the question is whether candidates whose nomination papers had been accepted at the time of scrutiny but who had later withdrawn their candidature within the prescribed time, were necessary parties to these petitions, under the provision of section 82 of the Representation of the People Act, 1951 and if so, what is the effect of their non-joinder

These preliminary issues have been argued at length before us by Mr. A. P. Pandy, Advocate for the respondents who had raised the plea of non-joinder, and by Mr. R. N Basu on behalf of the petitioners, in the different cases. They have been assisted by other lawyers representing both the parties in all the petitions. We proceed to discuss the first question enunciated above namely, whether a candidate whose nomination paper had been rejected, is a necessary party within the meaning of Section 82 of the Representation of the People Act, 1951.

On this point we have heard the rather ingenuous arguments advanced by Mr. A. P. Pandey. He has urged before us that a candidate whose nomination paper has been put in at the proper time and place, and which bears the signatures of a proposer and a seconder, and is accompanied by a declaration of appointment of a election agent and also by a receipt of deposit of security, has become duly nominated thereby. In case the candidate is a member of Scheduled Tribe, a further declaration has to be attached with the nomination paper. The

learned counsel has argued that, having done these things, the candidate *'duly nominates himself'* without the intervention of any Returning Officer. In other words, this contention amounts to this that, by the unilateral act of the candidate in putting in his nomination paper, along with certain declarations and receipt, gives him the status of a "duly nominated candidate". We are unable to see the soundness of this proposition as advanced by Mr. A. P. Pandey. According to the Law Lexicon of British India by B. R. Aiyar (Edition of 1904) the significance of the word *'duly'* has been given as some thing done "regularly" fitly, in a suitable or becoming to law or some rule or Law'. Thus it is clear from these interpretations that in order to become a *duly nominated* candidate, the nomination paper must stand the test of scrutiny provided in Section 36 of the Representation of the People Act, 1951. This section provides that on a date fixed for the purpose, the Returning Officer has to examine the qualifications of the candidate and of his proposer and seconder, also to examine the signatures in order to detect fraud if any and to judge whether the provisions of Section 33 and 34 have been complied with. Unless and until the Returning Officer finds the nomination paper in order and according to the requirements of law, it will be idle to say that the candidate has become duly nominated.

The learned counsel has referred to Section 100 of the Representation of the People Act Clause C and has urged a wrongful rejection of a nomination paper is sufficient to avoid the whole election. This contention has, however, no bearing on the question now before us, because it is a matter which would be gone into if any case, if pleaded by either party, even in the absence of the candidate whose nomination paper had been rejected.

It may be mentioned here that a candidate whose nomination paper had been rejected, could if he so desired either come in as a petitioner or as a respondent under the provision of Section 90, sub-section 1 of the Representation of the People Act, and he could also file recriminations under Section 97 of the said Act. Hence the absence of such a person from the original list of respondents cannot be said to be prejudicial to the proper decision of the case, over and above the fact that Section 82 does not make it necessary to implead him.

The learned counsel for the respondents has not been able to cite any previous decision in support of his proposition namely that a candidate whose nomination paper was rejected is a necessary party under Section 82 of the Representation of the People Act.

The learned counsel for the petitioners has argued that Sections 33 to 36 of the Representation of the People Act lay down the necessary requisites which would render a person a "duly nominated candidates". We agree that Sections 33 and 34 contain the necessary requirements which have to be fulfilled by a candidate when filling a nomination paper, and Section 36 lays down the provisions for testing the due compliance with the requirements of law. We consider that these different steps in the process of nomination comprise a series of acts which must be fulfilled before a person can claim to be a "duly nominated candidate."

For these reasons we are of the opinion that a candidate whose nomination paper has been rejected at the time of scrutiny cannot be called a duly nominated candidate and hence he is not a necessary party within the meaning of section 82 of the Representation of the People Act. While holding this view. We are not obvious of the provisions of Section 100(c) which provides that an election may be declared to be wholly void, if the result of the election has been materially affected by the improper acceptance or rejection of any nomination. It was open to the parties to an election petition to raise such plea and seek a decision thereon. It was open to a rejected candidate as well to come forward and be joined as a respondent in compliance with Section 90(1) within the prescribed period.

II. We have found above that a candidate cannot be considered to have been duly nominated before his nomination papers are scrutinised by the Returning Officer under Section 36 of Representation of the People Act and accepted by him. The next question is whether, after such scrutiny, the candidate whose nomination paper has been found to be in order becomes a person who must be made a party under the provision of Section 82 of the Representation of the People Act, which lays down that candidates who were "duly nominated at the Election" shall be joined as Respondents. In the cases now under consideration both parties admit in this connection that the candidates whose non-joinder is in dispute, were those whose nomination papers had been accepted at the time of scrutiny, but who later withdrew under Section 37 R.P. Act.

We wish to remark at the outset that we must presume the framers of law to have provided for results which are reasonable and effective and not such as would lead to undesirable or harmful consequence. Proceeding on this principle,

we must assume that Section 82 R.P. Act contemplates the impleading of living and existing persons and not of persons whose existance has been terminated by Act of God or by operation of law.

In the case under consideration certain candidates had of their own choice, availed themselves of the opportunity provided in Section 37 R.P. Act and *"terminated their candidature"* and had this fact published in an official list (U/S 38 R.P. Act) for the information of whole Electorate. By this act of the candidates, which has been officially recognised and accepted, they had ceased to exist in the election filed. They could not even withdraw their notice of withdrawal once given within the prescribed period. *By operation of Election law therefore such candidates had ceased to exist even as candidates, what to speak of "duly nominated candidates".*

We cannot conceive of any interpretation of Section 82 R.P. Act which would compel a petitioner to bring back to lief those candidates whose existance as such ceased after their withdrawal. Such candidates had publicly left the arena for good, and to drag them again *by force* into the later stages of the Election conflict would be, in our view, meaningless. Of course such candidates on reverting to the position of voters after their withdrawal, had every right as voters, to come in either as petitioners or, to apply to be joined as Respondents within the period prescribed by Section 90 sub-section (1) R.P. Act or to file recrimination U/S 97 R.P. Act. Not having chosen to do so, we fail to see what interests of justice would be served by impleading them at the instance of the contesting respondents, rather this steps would impede justice by helping those respondents who may desire to prolong the cases unnecessarily. For this reason we are of the opinion that such candidates, who had withdrawn U/S 37 R.P. Act are not necessary parties to these petitions with meaning of Section 82 R.P. Act.

As regards the cases cited before us we may remark generally that the argument in such cases decided under the Election Rule of 1920 are of no help to us, because under those laws no time limit was prescribed for withdrawal, and when therefore the act of withdrawal was not considered such a solemn and serious act of self effacement as under the present law. We notice the trend of the change in the law by referring to the Shahabad case decided recently (1947) when it was found that non-joinder of a candidate who had withdrawn is not fatal (See Indian Election Cases Sen & Poddar pages 750 & 751). See also Ludhiana Mohammadan Rural Constituency Case (Sen & Poddar page 970).

Our view also find support in the order passed in a recent case by the Election Tribunal of Allahabad in Election petition 316 of 1952, in which it was found that a candidate who had withdrawn his candidature, is "no large actually interested in the election" and is not a necessary party.

Mr. Pande has also cited a Baroda case No. 19 of 1952 published in the Gazette of India Extraordinary dated 11th August 1952. In that case the petitioner was a candidate whose nomination paper had been rejected. He alleged that the rejection was wrongful and improper and that the result of the election was materially affected thereby. In that case there was no issue about non-joinder of candidates who might have withdrawn their candidature. So any remarks made by the Tribunal on this question were in the nature of obiter. II. In this view of the matter we hold that the candidates who withdrew their candidature under Section 37 of the Representation of the People Act, 1951 are not necessary parties within the meaning of Section 82 of the said Act.

Announced.

The 26th November 1952. (Sd.) E. A. N. MUKARJI, *Chairman.*

(Sd.) UMA SHANKAR PD. *Member.*

Opinion recorded by Shri G. L. Shrivastava Re: Non-joinder.—1. Having unanimously recorded by the finding on the issue of non-joinder of a candidate whose nomination was rejected by the Returning Officer under Sec. 36 of the Representation of People Act 1951, the Tribunal has proceeded to consider and decide the issue of non-joinder of candidates whose nomination was accepted but who duly withdrew their candidature within the time prescribed by Section 37 of the Act and who, therefore, were not included in the list of valid nominations under Section 38 of the said Act. This issue is common in the cases referred to in the findings already recorded and the finding hereinafter recorded would be the finding on the identical issue of law in those cases and would form part of the file of those cases.

2. This common issue of law may be stated thus. Are the candidates whose nomination was accepted under Section 37 of the Representation of People Act

1952 but who withdrew their candidature under Section 38 of this Act a necessary party to the Election Petitions in question within the meaning of Section 82 of the Act.

3. The decision of this issue depends on the determination of the meaning and signification of the expression "duly nominated" used in Section 82 of the Representation of the People Act 1951 hereafter referred to as the Act which provides as follows:—

> "Parties to the petition—A petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself he was so nominated".

4. The learned counsel for both sides argued this point at length with ability and vigour. This expression "duly nominated" has not been defined in the Act. I have tried to interpret these words after a careful and integrated study and examination of the various provisions of the Act where the words occur in the light of the accepted cannons of interpretation. With the utmost respect for my learned colleagues I am constrained to say that I have not been able to agree with the construction put by them on this expression used in Section 82 of the Act. I therefore hold that a candidate whose nomination was accepted under Section 37 but who withdrew his candidature under Section 38 should be regarded as 'duly nominated" within the meaning of the Section 82 of the Act. The reasons for this opinion have been set out below.

5. "In the absence of any judicial guidance or authority dictionaries can be consulted". [Maxwell: the interpretation of statutes 9th edition, page 35 where the above passage has been reproduced from Merr *v.* Kennedy (1942)/K.B. 409, 413]. I confess that dictionaries which were available have not given me much guidance in construing the expression duly nominated used in the particular context of the Act.

6. Before calling to my aid the method of view in this expression in the historical setting *i.e.* in the light of its use in previous legislations and another method of ascertaining its interpretation in Part *materia* statutes I would do well to examine all the parts of this Act where this expression is used for appreciating its true meaning. In "the interpretation of statutes" (5th Edition) Maxwell remarks at page 30 on the authority of Lord Wsler M.R. and Fry L. J. in the case Lancashire and Yorks Ry. Co. *v.* Knowles 20 Q.B.D. 391 that "such a survey is often indispensable even when the words are the plainest, for the true meaning of any passage is that which (being permissible) best harmonises with the subject and with every other passage of the statute". In section 33 of the Act words "duly nominated" have been used in sub-section 3 and in the second and third provisos to this sub-section in connection with some declarations and certificate.

7. According to sub-section (3) which follows the requirement of the filling of a duly completed nomination paper as prescribed in sub-section (1) "no candidate shall be deemed to be duly nominated" unless a declaration of appointment of an election agent is delivered along with the nomination paper. So also "no candidate shall be deemed to be duly nominated" unless the formalities prescribed in the said two provisions are complied with.

8. The relevant part of section 34(1) of the Act stands thus "A candidate shall not be deemed to be duly nominated unless he deposits or causes to be deposited in the case of an election to Parliament (other than a primary election) a sum of five hundred Rupees.....**XX**".

9. Then follow sections 35 and 36, relating to the scrutiny of nominations. Under section 36 (2) of the Returning Officer has to decide all objections and may refuse any nomination on any of the five grounds mentioned in it. Again according to sub-section (3) of this section the nomination of a candidate cannot be refused on the ground of irregularity in respect of a nomination paper if "the candidate has been *duly nominated* by means of another nomination paper in respect of which no irregularity has been committed".

10. Next section 37 refers to the withdrawal of candidature within the prescribed time by means of a duly completed notice in writing. After some formalities the Returning Officer has to publish a list of valid nominations under section 36 in accordance with Rule I and II of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951. Section 39 refers to nominations for the Council of State and Legislative Councils and the aforesaid provisos have been made applicable to these nominations. Then the Chapter I (Nomination of Candidates) of Part V ends.

11. It may be said that the method of defining the expression by negative propositions is perceptible in sections 33 and 34 of the Act. It seems to be abundantly clear that a candidate should be deemed to be duly nominated if he satisfies the requirements of law and passes the test of scrutiny.

12. Ordinarily, this class of duly nominated candidates is narrowed down to validly nominated candidates after the withdrawal of candidatures under section 37 and the publication of the list of valid nominations under section 38 of the Act. The crux of the question is whether the words "duly nominated" used in section 82 of the Act include this larger class or is to be deemed to be confined to the smaller class of valid nominations after the withdrawal. In my opinion these two classes have distinctive status and legal character under the Act for the purposes of election and proceedings connected with it. They have been used in the statute in a clear and unambiguous manner and in some places in just position which leaves no doubt about their district meaning and signification.

13. Again, in Chapter II section 46 of the Act the following passage occurs in the beginning of the section: "A candidate who has been duly nominated under this Act and who has not withdrawn his candidature in the manner and within the time specified in sub-section 3 . ". Here due nomination under the Act has been recognised and the Act of withdrawal is not contemplated as extinguishing the status acquired already as a duly nominated candidate.

14. The Central Government has framed the rules for carrying out the purposes of the Act under section 169 thereof. These rules are described as "the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951". The question is whether any part of these rules can be used in construing the expression in question. According to Maxwell general rules and forms made under the authority of an Act may be referred to for the purpose of assisting in the interpretation of the Act (page 39 of the Edition of the treatise hereinbefore adverted to). In Rule No. 2 clause (f) stands as follows: "Validly nominated candidate" means a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with sub-section (4) of section 39, as the case may be. This definition confirms the view expressed above.

15. I am not prepared to think that if the framers of the Act intended that only validly nominated candidates, that is, duly nominated candidates who had not withdrawn their candidature, should be impleaded as respondents, they would not have used the words as used in section 82 of the Act. The language of this section would have been different if this was the object and intention. As it is, it admits of no doubt. The language is plain and such language best declares without more, the intention of the law giver and is decisive of it. The rule of construction is "to intend the legislature to have meant what they have actually expressed". Maxwell goes further and says: "It matters not, in such a case, what the consequences may be". Undoubtedly if two meanings are possible, and one leads to absurdity, inconsistency or injustice, the other may be preferred. But if two meanings are not possible, the task of interpretation does not arise. In this connection it may be safely remarked that in construing the words "duly nominated" used in section 82 of the Act as I have done, no question of absurdity or injustice arises. The argument based on absurdity or injustice has been described as a "Snare" unless absurdity or injustice is extremely gross and palpable In this matter there is no absurdity or injustice involved in this interpretation at all. This point will be elucidated further hereafter.

16. The legislation repealed by section 171 of the Act *viz.* the Indian Election Officers and Inquiries Act 1920 and other laws relating to this subject may now be looked at for the purpose of ascertaining the meaning of the expression in question. By other laws is meant the Order in Council known as the Government of India (Provincial Elections) Corrupt Practices and Election Petition Order 1936 dated 3rd July 1936 and the Acts of Provincial Legislatures and Rules framed to regulate the form of Election Petitions and the persons who are to be made parties thereto and other matters of procedure under para. 6 of Part III of this Order. By the authority of this para., the provincial Governments could authorise the Governor to exercise his individual judgment to dismiss petitions for non-compliance with prescribed requirements. The provinces framed their own Rules which indicate that uniformity was lacking. To illustrate this point the case of Shahabad Mohammadan Rural Constituency 1946 (Manloor Husain *Vs.* Gholam Mohiuddin) reported at page 746 of Indian Election Cases by Sen and Poddar may be referred to It was held in this case that non-joinder of nominated candidate who had withdrawn from contest was not fatal to the claim for seat and the case

of Banaras-*cum*-Mirzapur cities was distinguished on the ground that the law in V.P. and Bihar differed.

17. In Karnal South General Constituency case (Pt. Mangal Ram *v.* Chaudhari Anant Ram) reported at page 438 of the same book, it was held that where the petitioner claimed the seat for himself it was incumbent upon him to implead all other candidates who were nominated at the election irrespective of whether their nomination papers were withdrawn before or after the scrutiny or were rejected as a result of the scrutiny. On the same ground the petitioners' claim for the seat was held inadmissible in Ambala and Simla (Mohammadan) Constituency case 1937 reported at page 6 of the same book, though the nominated candidate had subsequently withdrawn.

18. It may be noted that the claim for seat was interlinked with the necessity of joining all nominated candidates as respondents irrespective of the withdrawal of candidature in the laws of various provinces. These laws do not seem to be absurd or devoid of reason. The author of the "Law of Elections and Election Petitions" (Nanakchand Pandit) opines that the reasons for imposing this duty is that each of the other candidates may have the opportunity to raise recriminations to show that the petitioner is not entitled to this declaration which he claims. Undoubtedly this object has been achieved under section 90(1) of the Act under which any candidate can come in and be joined as respondent within fourteen days of the publication of the petition in the official gazette. But this section requires a candidate to take some steps to be joined as a respondent within prescribed time while section 82 purports to give him the right unsought and unsolicited. This privilege implies special consideration to candidates who entered the arena for election at the first stage and ran the gauntlet of scrutiny successfully but eventually repaired from the arena for reasons of their own. Though they did not go to the polls, the legislature seems to have thought that their status as duly nominated candidates should be recognised in the contest of election petitions which may lead to unthought of results or the transfer of seat from an elected candidate. They may join the conflict, if they so choose, after skulling in their tents but there is no element of compulsion. In this view of the matter, there is no absurdity involved in the legal requirements of their joinder as respondents in an election petition. *Lex est dictamen legis* is the maxim which should normally be applicable. There is no reason to suppose that the aforesaid interpretation of section 82 proves an exception to this rule.

19. In fact section 82 of the Act has unified and rantionalised the law prevailing before the Act about the impleading of respondents in election petitions. A petitioner has been served the trouble of relating the joinder of parties to the reliefs claimed. It is therefore provided that all duly nominated candidates should be joined as respondents. What was perhaps contemplated to be a simplification of the matter has led to controversies of vast magnitude about the definition or meaning of a "duly nominated candidate". I have had the advantage of reading a copy of the order in election petition No. 316 of 1952 before the Election Tribunal at Allahabad (Shri Saligram Jaiswal *v.* Sheo Kumar Pandey and others) in which it has been held that a candidate whose name does not appear in the list of valid nominations can not be regarded as a duly nominated candidate. With utmost respect to this Tribunal I have not been able to accept this interpretation for the reasons already mentioned. One very much wishes that the expression "duly nominated candidate" used in section 82 of the Act was so defined or explained by the legislature as to be beyond the range of controversy.

20. My finding, therefore, is that duly nominated candidates who have withdrawn their candidature under section 37 of the Act should be joined as respondents in an election petition. But the majority view of my learned colleagues will prevail under section 104 of the Act and would be regarded as the view of the Tribunal. In the circumstances I do not feel called upon to express an opinion whether this Tribunal is competent to order or permit the joinder of such candidates as respondents sump to or on the request of the petitioners concerned.

21. The question of the effect of non-joinder of such respondents does not arise for the practical purposes of these petitions in view of the opinion of the majority on this matter. It may however be said to arise as a sequal to my finding on the issue of non-joinder. But I feel it would be needless to express a definite opinion on this question at this stage of the proceedings. The question of power or jurisdiction of Tribunals to permit amendments in election petitions is likely to arise in some of these cases in future and it may be embarrassing to all concerned including myself, if I arrive at or express conclusions on this subject. Suffice it to say that in spite of the apparently mandatory language of section 82 the Act

has not provided for the summary dismissal of election petitions on the ground of non-joinder of parties, as it has been provided for dismissal for non-compliance with the provisions of section 81, section 83 or section 117 of the Act.

22. The exclusion of non-compliance with the requirement of joinder of parties contained in section 82 from the category of disobedience of other mandatory provisions referred to above meriting the dismissal of petitions is significant. This exclusion seems to be based on sound reasons. On the other hand the inclusion of non-joinder of parties in this sternly imperative category would have wiped out the distinction between necessary party and proper party and would have imposed a uniform penalty regardless of the matter and consequence of non-compliance. In statutes sometimes an apparently mandatory provision is regarded as really directory.

(Sd.) G. L. SHRIVASTAVA, *Member*,
Election Tribunal, Rewa, V.P.

FINDING OF THE TRIBUNAL

The unanimous view of the Tribunal is that the non-joinder of candidates whose nominations had been rejected at the time of scrutiny and of those who withdrew their candidature is not fatal to the maintenance of these petitions.

The view of tone of the members of this Tribunal (Shri G. L. Shrivastava) as recorded above however is that a candidate whose nomination papers had been accepted at the time of scrutiny and who withdrew under section 37 of the Representation of the People Act, should have been joined as respondents to these petitions.

(Sd.) E. MUKARJI, *Chairman*.
The 26th November 1952. (Sd.) U. S. PRASAD, *Member*.
(Sd.) G. L. SHRIVASTAVA, *Member*.

ANNEXURE B

IN THE COURT OF THE ELECTION TRIBUNAL VINDHYA PRADESH AT REWA.

FINDINGS

In Election Petitions Nos. 6/175, 9/237, 10/238, 11/239, 12/249, 14/304 and 15/307, it has been contended by respondents that these petitions have not been verified in a manner laid down in the Code of Civil Procedure 1308 for the verification of pleadings, and consequently for compliance with the pfovisions of Section 83 of the Representation of the People Act, 1951, these petitions should be dismissed. The petitioners in question have submitted that the verification clauses in the said petitions are strictly in accordance with the provisions of the Civil Procedure Code and in any case there has been a substantial compliance with such provisions. It is, however, submitted on behalf of all the petitioners referred to above except in petition No. 6/175 that if any technical defects in the verification clause needs amendment, permission should be granted for amending these clauses in the interest of justice, and for this purpose written applications have been filed in these cases.

2. The question of correctness and validity of the verification clauses is common to those election petitions as also the question of amendment, if any. Common arguments were therefore addressed in these cases. It has therefore been deemed fit and proper to decide these issues of preliminary nature by virtue of this order which would deal with the merits of each case and the common question of law involved in them. This course has been adopted with the concurrence of the parties concerned and this order would govern the disposal of various issues arising in these cases.

3. The issues in the cases calling for findings are reproduced below:—

Petition No. 6/175.—I(a) Is the petition properly verified?

(b)If not, what is the effect?

(c) Should leave, if applied for, be given to the petitioner to amend the verification?

Petition No. 9/237.—II(i) Has clause (i) of para. 7 of the petition not been properly verified?

(ii) What is the effect?

Petition No. 10/238.—II(i) Have the petition and list of particulars not been properly verified?

(ii) If so, what is the effect?

Petition No. 11/239.—II(1) Has the petition not been properly verified?

(2) If so, what is the effect?

Petition No. 14/304.—II. Are the petition and the list of particulars not properly verified, and if so, what is the effect?

Petition No. 15/307.—IV(1) Have the petition and list of particulars not been properly verified?

(2) If so, what is the effect?

4. The relevant portion of Order 6 Rule 15 C.P.C. is as follows:—

(1) * * * * * *

"(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

In several proceedings governed by provisions of the Civil Procedure Code the omission to verify and pleadings and defective verification of pleadings have always been regarded as a mere irregularity and permission is therefore accorded for correction of this defect (I.L.R. 18 Allahabad, page 396 and I.L.R. 46 at Allahabad, page 637). The respondents in these cases have urged that the general power of amendment of pleadings expressly granted by the Code of Civil Procedure to courts of law or inherent in them under the Court are not necessarily the powers of Election Tribunals under the Representation of the People Act, 1951. In support of this argument, it is said that the R.P. Act has prescribed the powers of Election Tribunals in sub-section (3) of section 83 and consequently it should not be permissible to go beyond these limits. The contention gives rise to a large issue of the power of amendment in a general way. We do not propose to deal with this general question in this order, because we are not called up to decide it in connection with this issue which is related to verification clause only. It is, however, pertinent to observe that a Statute which enjoins the decision of some questions in a judicial way through the agency of specially constituted Tribunal may not expressly provide for matters of technicalities and details in the exercise of such powers for the fair and effectual decision of such question. Some inherent powers for the attainment of the objective in view may therefore be implied. This does not however mean that such implied powers can be pushed beyond legtimate limits.

5. We have examined the various cases dealing with this question decided by election tribunals and have also examined other relevant cases decided in connection with election petitions prior to the enactment of the R.P. Act, 1951. The general view seems to be that if the verification clause is in substantial compliance with the provisions of law regarding such verification, errors in technicalities may be condoned or allowed to be amended. But if verifications really grossly improper and farcial and consequently no verification in the eye of law, it may be otherwise. Without committing ourselves to a general view regarding the power of Tribunals in the matter of amendments, we are in respectful agreement with the opinions expressed by the Election Tribunal, Allahabad in Election Petition No. 198 of 1952, dated 2nd December 1952 (Shri Govind Malvi *Vs.* Murli Manohar) and Election Tribunal, Rajnandgaon in Election Petition No. 296 of 1952, dated 27th November, 1952 (Moti Lal *versus* Trilochan Singh).

6. Now we propose to deal with specific cases on merits.

(a) In petition No. 6/175 of 1952 the verification clause stands as follows:—

> " I verify that the allegations made in paras above of the said petition are correct to my personal knowledge and belief'. This verification only adds the words "and belief" to a perfectly valid verification according to law. In the cases, referred to above decided by the High Court, Allahabad, Election Tribunal, Allahabad, these words were not considered improper. We hold that the verification in this petition is valid."

(b) In petition No. 9/237 verifications of all paragraphs and sub-paragraphs except 7(b), (f) (m), and (n) and paragraphs 7(i) are correct and unexceptionable. The rest of paragraphs except paragraph 7(i) have been verified partly on personal knowledge and partly on personal knowledge received and believed to be true. This had to be necessarily so because some sentences in these sub-paras referred to matters of personal knowledge and some portions are based on knowledge derived from others but believed by the petitioner. This verification is therefore in substantial compliance with the provisions of law. The only question which remains is that of 7(i). This sub-para. has been verified as the petitioner's "belief and submission". Its perusal shows that it contains the petitioner's interference and as such may not call for verification in the prescribed manner. This petty error, if it is an error at all, merits condonation. We therefore hold the verification in this petition does not violate the provisions of law and the verification is therefore not improper.

(c) In petition No. 10/238 the verfication clause are exactly similar to those in petition No. 9/237 and our finding, therefore, is the same. It may, however, be added that the list of particulars has been verified on personal knowledge of the petitioner and this verification is flawless. We therefore, hold that the verification in this case is not improper and needs no amendment.

(d) In petition No. 11/239 the verification clauses are exactly similar to those in the petition adverted to above, for the same reasons we hold that they are not invalid and no amendment is called for.

(e) In petition No. 12/249 the verification of most of the paragraphs is quite proper. The only question is about para 5(e) and (f). The allegations in these sub-paras. are a matter of inference made by the petitioner and have been verified as based on his belief. But these two sub-paras. contain important statements of fact and the petitioner should mention the basis of such belief. He should do so within a week, otherwise the verification is valid.

(f) In petition No. 14/304 the major portion of the allegations in the petition and list of particulars has been verified correctly. The only question is about the verification of argumentative and inferential portions of the petition contained in paras. 7(i), (x), (z), (bb) and 7(cc). In these paragraphs there are some allegations of fact mixed up with other general allegations which seem to be based on information received and believed by the petitioner. It is, therefore, necessary that the petitioner should not describe them as mere submission and should clearly verify this portion as based on information received and believed to be true or on other basis for these allegations. We hereby permit the amendment of verification clause in respect of paragraphs 7(i), (x), (z), (bb), and 7(cc) within a week and hold that the rest of the petition has been properly verified.

(g) In petition No. 15/307 all paragraphs except paras. Nos. 6(10) and 6(11) have been properly verified. The allegations in paras. 6(10) and 6(11) are of a serious nature and their verification as "submission" should not pass muster in this case. It is, therefore, ordered that paragraphs 6(10) and 6(11) should be verified according to the provision of law and the petitioner should do so within a week as prayed for.

7. We may add that under section 85 of the R.P. Act, 1951 the Election Commission has been directed to dismiss petitions for non-compliance of the provisions of sections 81, 83 and 117 of the Act. Under section 90, sub-section (4) of the Act this question has been left to the discretion of Election Tribunals. Such discretion has to be exercised judicially and according to the accepted principles for its exercise and not arbitrarily or unreasonably. While recording our findings on these issues we have given careful consideration to the principles of law laid down

in the vardious rulings for the correct interpretation of the expressions 'May' and "shall" and some implied powers implicit in the constitution of Tribunals of this character.

8. As already clearly expressed, this order dismisses of the aforesaid issues arising in the petitions referred to above and should be deemed to be the order in each case.

(Sd.) E. A. N. MUKARJI, *Chairman.*
(Sd.) U. S. PRASAD, *Member.*
(Sd.) G. L. SHRIVASTAVA, *Member.*

[No. 19/238/52-Elec.III/3376.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

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